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SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO, IL 60606-6473

EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEFAN ASCHOFF, JORG BINDNER, VOLKER RIECKEN, and ROLAND WEIDNER

Appeal 2009-001738
Application 10/669,075
Technology Center 2100

Decided: June 29, 2009[1]

Before JOSEPH L. DIXON, JOHN A. JEFFERY, and THU A. DANG, *Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

Appellants appeal the Examiner's final rejection of claims 1-16 under 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b)(2002).

We affirm.

I. STATEMENT OF THE CASE

A. INVENTION

According to Appellants, the invention relates to an interface device for audiological devices. More particularly, the invention relates to a method for exchanging data for audiological devices. (Spec. 1, ¶ [0001]).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. An interface device for audiological devices between a plurality of audiological applications and at least one audiological data administration system, comprising:

an audiological application access device to which the plurality of audiological applications for controlling audiological hardware components can be connected for uniform data exchange,

an audiological data administration connection device to which at least one audiological data administration system can be connected, and

a converter device, that closes a connection between the audiological application access device and the audiological data administration connection device, the converter device being configured to perform at least one of: a) converting respectively specific audiological

> application data acquired by the audiological application access device in a predeterminable databank format for the plurality of audiological applications, and b) converting databank audiological data acquired from the audiological data administration connection device into one or more respectively specific application formats for the plurality of audiological applications.

C. REJECTIONS

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Eaton	US 2005/0283263 A1	Dec. 22, 2005

Claims 1-16 stand rejected under 35 U.S.C. § 102(e) over the teachings of Eaton.

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Eaton discloses "a converter device" configured to perform at least one of "converting respectively specific audiological application data… in a predeterminable databank format for the plurality of audiological applications" and "converting databank audiological data… into one or more respectively specific application formats for the plurality of audiological applicatons" (Claim 1)?

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Eaton

1. Eaton relates to fitting, programming, or upgrading hearing aid systems (p. 1, ¶ [0002]).
2. Distributed applications are adapted to move from the server 116 to the device 106 to execute on the device 106 (p. 3, ¶ [0041]; Fig. 1).
3. Once a distributed application is executed on the device 106, the device 106 may interact with the hearing aid system 102 through the user interface provided by the distributed system (*id.*).
4. During the fitting process, a piece of software may be executed on the mobile device 606 to interact with the patient wearing the hearing aid system 602B, and the aural response from the patient is either automatically sent back to the testing software by the hearing aid system 602B or is recorded manually into the testing software through the mobile device 606 (p. 4, ¶ [0053]; Fig. 6).
5. Such aural responses are formatted to form an audiogram before sending the information to the programming fitting server (*id.*).

IV. PRINCIPLES OF LAW

35 U.S.C. § 102

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis*

Pharm.Corp., 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (citation omitted) "In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art." *Id.* (citations omitted).

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

V. ANALYSIS

Appellants provide the same arguments with respect to the rejection of claims 1-16. Therefore, we select independent claim 1 as being representative of the cited claims. 37 C.F.R. § 41.37(c)(1)(vii).

In the Appeal Brief, although Appellants admit that "[t]he system of Eaton talks about different audiological applications," Appellants argue that Eaton "refers to [the different audiological applications] in different embodiments" (App. Br. 8). Appellants contend that "[t]he present

converter, as claimed in the independent claims, is thus substantially more flexible than that as taught by Eaton, since it can convert into several formats within one embodiment" (*id.*).

However, the Examiner finds that:

> Eaton teaches a plurality of audiological applications from a data administration system [server 116] distributed/downloaded and dynamically plug into an interface device [device 106] for adapting to interact [paragraphs 0040, 0041] with audiological devices [hearing aid system 102]: inter alia, a test and measuring application [paragraphs 0010, 0045, 0053] and a programming application [paragraphs 0010, 0043, 0059] using a patient identification or aural response.

(Ans. 7).

Thus, we determine on this Appeal whether Eaton discloses "a converter device" configured to perform at least one of "converting respectively specific audiological application data… in a predeterminable databank format for the plurality of audiological applications" and "converting databank audiological data… into one or more respectively specific application formats for the plurality of audiological applicatons" (Claim 1).

We begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio,* 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns,* 988 F.2d at 1184.

Appellants' contention that Appellants' converter is substantially more flexible than that of Eaton "since it can convert into several formats

within one embodiment" is not commensurate with the language of claim 1. That is, contrary to Appellants' contention, claim 1 does not recite any "into several formats" or "within one embodiment" limitation. In fact, claim 1 merely recites converting "in *a* predeterminable databank *format* for the plurality of audiological applications" or "into *one* or more respectively specific application formats for the plurality of audiological applications" (emphasis added). Accordingly, we will not read the conversion as "into several formats" or "within one embodiment," as Appellants contend.

As the Examiner finds, "Eaton teaches a plurality of audiological applications from a data administration system" (Ans. 7). In particular, Eaton relates to fitting, programming, or upgrading hearing aid systems (FF 1). In fact, even Appellants admit that "[t]he system of Eaton talks about different audiological applications" (App. Br. 8). An artisan would have understood that Eaton discloses a system "for a plurality of audiological applications" as required by claim 1.

Furthermore, Eaton discloses a device which closes connection between a short range network and a long range network (FF 2-3), wherein aural responses from the patient are received (FF 4) and formatted to form an audiogram (FF 5). An artisan would have understood such device to be a converter, wherein the responses are converted in "*a* predeterminable databank *format*" or into "*one* or more respectively specific application formats" (emphasis added), as required by claim 1. In fact, Appellants even admit that "Eaton is adapted to convert data (aural responses), into one predetermined audiogram format" (App. Br. 8, emphasis omitted).

Accordingly, we find that Eaton's device converts the aural responses in *a* or *one* format, wherein the format is for the plurality of audiological applications disclosed in Eaton.

Thus, we agree with the Examiner that Eaton discloses "a converter device" configured to perform at least one of "converting respectively specific audiological application data… in *a* predeterminable databank *format* for the plurality of audiological applications" and "converting databank audiological data… into *one* or more respectively specific application formats for the plurality of audiological applicatons" (Claim 1, emphasis added).

Accordingly, we conclude that the Appellants have not shown that the Examiner erred in rejecting independent claim 1, and claims 2-16 falling with claim 1, under 35 U.S.C. § 102(e).

CONCLUSIONS OF LAW

(1) Appellants have not shown that the Examiner erred in finding that claims 1-16 are anticipated by the teachings of Eaton.

(2) Claims 1-16 are not patentable.

DECISION

We affirm the Examiner's decision rejecting claims 1-16 under 35 U.S.C. § 102(e).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

PEB

SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO IL 60606-6473